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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,386	10/28/2003	Alain Vetoretti	713-936	9133
22429	7590	06/03/2004	EXAMINER	
LOWE HAUPTMAN GILMAN AND BERNER, LLP			BRINSON, PATRICK F	
1700 DIAGONAL ROAD			ART UNIT	PAPER NUMBER
SUITE 300 /310				
ALEXANDRIA, VA 22314			3752	
DATE MAILED: 06/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicant No.	Applicant(s)
	10/694,386	VETORETTI ET AL.
	Examiner	Art Unit
	Patrick F. Brinson	3752

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/28/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by GB No. 2,182,430 to **Schofield**.

The **Schofield** reference discloses a tube (1) made from transparent material having an effective inner cross section that is not circular, as recited in claim 1. The inner wall is ribbed longitudinally, as recited in claim 2, made from the same material as that of the tube, as recited in claim 3. The inner cross section has a substantially rounded-star shape, as recited in claim 7. **Schofield** does not disclose the tube for feeding fastening elements with a circular head for a fastening apparatus, however, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by

Fisher et al.

The patent to **Fisher et al.** discloses a tube (10"), fig. 4, a minor portion of which is made from transparent material, a major portion of which is originally made from transparent material but is filled with a pigment or filler to make it more translucent or opaque. The embodiment in fig. 4 discloses an inner cross section that is not circular, as recited in claim 1. The inner wall portions (60a") and (60b") are disclosed as having a series of longitudinally extending parallel ridges, splines ribs or other projections (80), as recited in claim 2. Figs. 5a-f discloses the projections as being formed of any number of different surface profiles. Col. 6, lines 64-66 discloses that the inner wall segment of which the ribs are formed, may be made from a same or different polymer as the first and second polymer materials, as recited in claims 3 and 4. The **Fisher et al.** reference does not disclose the tube for feeding fastening elements with a circular head for a fastening apparatus, however, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended

to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

3. Claims 1, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by **Otterson**.

The patent to **Otterson** discloses a tube made of transparent material having an inner cross section that is not circular, as recited in claim 1. Fig. 4 discloses three desirable polygonal cross sections, including triangular, rectangular, and pentagonal, as recited in claims 5 and 6. The patent to **Otterson** does not disclose the tube for feeding fastening elements with a circular head for a fastening apparatus, however, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Lockwood, Pirkle, Begun, Sgroi et al., Gordon et al., Kikos, Lumpp, and Bauer are all pertinent to Applicant's invention in disclosing transparent tubes having non-circular cross sections. The patents to Lenzi and

Johansson are pertinent in disclosing plastic tubings having non-circular cross-sections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (703) 308-0111. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Patrick F. Brinson
Primary Examiner
Art Unit 3752

P. F. Brinson
May 28, 2004